

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE NO. 12-613 SC13-1333

LAURA M. WATSON

JUDGE WATSON'S AMENDED MOTION FOR REHEARING AND/OR CLARIFICATION AS TO THE CLERK'S ORDER DENYING AMICUS CURIAE JAMES S. WERTER, ESQ. AND AMICI CURIAE PHILLIP BUSEY ET AL.'S MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND THE ULTIMATE STRIKING OF THE PROPOSED BRIEFS

The Honorable Laura M. Watson, (hereinafter "Judge Watson"), by and through undersigned counsel, files this Motion for Rehearing and/or Clarification as to the Clerk's order denying Amicus Curiae, James S. Werter, Esq. and Amici Curiae Dr. Philip Busey et al.'s, Motions for Leave to File Amicus Curiae Briefs, and the ultimate striking of the proposed briefs, and in support thereof states as follows:

I. INTRODUCTION

James S. Werter, Esq., (hereinafter "*Werter*") requested leave to file an amicus curiae brief in support of Judge Watson. Likewise, Dr. Philip Busey, Samuel D. Lopez, Jay Neal, and Peter Szymanski (hereinafter "*Dr. Philip Busey, et al.*") , moved the Court under Fla. R. App. P. 9.370(a) for leave to file an Amicus

Curiae Brief in support of Appellant, Judge Watson.

Werter's appearance as amicus in this matter stems from his interest in maintaining a high quality of the judiciary. He and several of his colleagues submitted for the Court's consideration affidavits which are included in the appendix to the proposed amicus curiae brief. In these affidavits, attorneys who have appeared before Judge Watson testify about Judge Watson's competence and qualities as a judge. According to the collective experience of the testifying attorneys, Judge Watson has an excellent judicial temperament, is hard working, well prepared, able to handle complex cases, courteous to attorneys and litigants, and impartial. She is one of the most competent and responsive judges these attorneys have appeared before in their collective experience.

Dr. Philip Busey is a political aide and consultant who has spent much of his life dedicated to voters' and candidates' rights.¹ He has performed paid professional campaign work in more than forty (40) elections in Florida, and volunteered his time and contributed financially in at least fifty (50) additional elections in Broward County, including those of County Court Judges. Busey has

¹ Busey also taught horticultural for many years, and is currently an adjunct professor at Miami Dade College, and Professor Emeritus at University of Florida.

been a candidate five (5) times: two (2) times for public office and three (3) times as a Broward County Democratic Executive Committee member, and nominee for Chair of the County Democratic Party. Since 2005, he has been Chair of the Florida Political Committee Grassroots Patriots, and from 2011-2013, he was a member of the Redistricting Advisory Committee for the Broward School Board. In addition, Busey has advocated for the elections process in multiple letters to the editor in local newspapers, and registered hundreds of voters. The remaining Amici that joined in the brief with Busey include Lopez (a practicing attorney and past candidate), Jay Neal (President and CEO of Florida Association for Insurance Reform “FAIR”) and Pete Szymanski (retired Detroit Police Officer and Broward County voter). *Not only* (a) do Busey, and Lopez have substantial experience and interest in elections, and campaigns, and/or as being past candidates themselves, and (b) do Lopez, Neal, and Szymanski have substantial experience in due process, as detailed in the motion filed by them, *but also* (c) Busey, Lopez, Neal, and Szymanski are Broward County registered voters, *who cast their votes in the subject judicial election for Circuit 17, Group 45* (Judge Watson’s race).

Furthermore, Neal² and Szymanski, knowing of the subject *allegations* against Judge Watson, made the reasoned and informed decision to vote for Judge Watson to be Circuit Court Judge. A citizen's right to vote for the candidate of his/her choice is the cornerstone of our democracy. The threatened removal of Judge Watson will *not only* disenfranchise Busey, Lopez, Neal, and Szymanski by nullifying their votes, *but also* all the other 691,021 voters who exercised their constitutional rights to determine their elected circuit judge in such election.

On July 11, 2014, the JQC served a Response in Opposition to *Werter's* and *Dr. Philip Busey et al.'s* Motions for Leave to File Amicus Curiae Briefs. On July 18, 2014, the Clerk issued an order ***denying*** *Werter's* motion and striking the amicus curiae brief and a similar order regarding *Dr. Philip Busey et al.'s* motion and brief. These orders stated:

The 'Motion of James S. Werter, Esq. for Leave to File Amicus Curiae Brief' on behalf of Judge Laura Marie Watson *is hereby denied* and the amicus curiae brief and appendices, filed with this Court on July 2, 2014, *are hereby stricken.* (emphasis supplied). R. 07/18/2014.

and

²Neal also made a financial contribution to Judge Watson's campaign [App. Tab 4 of *Dr. Philip Busey, et al.* amici brief].

‘Dr. Philip Busey, Samuel D. Lopez, Esq. Jay Neal, and Peter Szymanski’s Motion for Leave to File Amicus Curiae Brief’ on behalf of Judge Laura Marie Watson *is hereby denied* and the amici curiae brief and appendix, filed with this Court on July 2, 2014, *are hereby stricken*. (emphasis supplied). R. 07/18/2014.

These orders appear to have been issued without authority from a Supreme Court Justice, as it is not signed or attributed to any of the Justices. Neither the Florida Rules of Appellate Procedure, nor the Florida Supreme Court’s Internal Operating Procedures grant the Clerk the authority to deny a Motion for Leave to File Amicus Curiae Brief and to strike the proposed brief. The Court’s Internal Operating Procedures designate that “ [t]he chief justice and administrative justice have authority to dispose of routine procedural motions, such as those seeking an extension of time, permission to file enlarged briefs, and expedited schedule, or a consolidation of cases. The chief justice and the chief justice’s designee also have authority to *grant requests for stay* during the pendency of a proceeding...Motions filed after a case has been assigned to a justice are ruled on by that justice.” (emphasis supplied). *See*: Internal Operating Procedures, Section VI. Motions.

There simply is nothing permitting the Clerk to issue a ruling on a substantive motion absent a directive by the appropriate justice. The Motion for

Leave to File Amicus Curiae Brief should be ruled upon by the Court. In instances wherein this Court and others have denied the right to file an amicus brief, an order explaining the Court's decision is usually provided. Moreover, the JQC did not make any request to strike the amicus curiae brief. Nonetheless, the Clerk ordered the brief stricken without a request by the Judicial Qualifications Commission (hereinafter "JQC" or the "Commission") to do so.

II. JQC'S OBJECTION TO WERTER'S AMICUS CURIAE BRIEF

The Commission advanced three reasons for objecting to the Court's consideration of the *Werter* amicus brief: (1) that the attorney affidavits are similar to letters of recommendation from the community identified in the In re Graham case and should be ignored, (2) that the brief and appendices will not assist the Court and should be discounted because they violate the Hearing Panel's pre-trial order, and (3) the Court does not have unlimited resources and Judge Watson's principal brief is already too long. R.07/11/2014, p. 2.³

³ The JQC *suggests* that Judge Watson unreasonably delayed these proceedings. The entire JQC process in Judge Watson's case, from filing of formal charges (June 24, 2013) through final hearing (February 10-12, 2014) was only six months, twenty-one days (21). This case was resolved in record speed compared with other JQC cases. The average length of time in months for disposition by the Hearing

Firstly, the JQC relies on the case of In re Graham for the proposition that the appendix containing affidavits of attorneys who have appeared before Judge Watson is akin to “letters of recommendation from members of the community who supported [Judge Graham].”⁴ Affidavits from attorneys who have appeared before Judge Watson *are not the equivalent* of letters of recommendation from members of the community. Attorneys are essential to the administration of justice. They are officers of the court, are charged with the great public responsibility of aiding the Court, and are required to serve the ends of justice with candor and fairness. See Hays v. Johnson, 566 So.2d 260, 261 (Fla. 5th DCA 1990). Florida Statute § 454.11 specifically grants attorneys the right to appear as an amicus curiae when the court permits.

Secondly, the JQC claims that the attorney affidavits demonstrating the collective experience of the testifying attorneys, that Judge Watson has an excellent judicial temperament, is hard working, well prepared, able to handle

Panel of the JQC in contested cases is approximately eleven months. See: “Review of the Judicial Qualifications Commission,” January 2008, Speaker Marco Rubio, Appendix E: JQC Disposition Time.

⁴ JQC Motion in Opposition p. 5. *citing* In re Graham, 620 So.2d 1273, 1276 (Fla. 1993).

complex cases, courteous to attorneys and litigants, impartial, and one of the most competent and responsive judges these attorneys have appeared before, *will not assist the Court* in determining Judge Watson’s current fitness to hold judicial office. Such an argument is completely void of logic and hardly seems worthy of comment. Likewise, the argument advanced by the JQC that consideration of these affidavits violates the Hearing Panel’s Order, ignores the obvious—the amicus are not parties to the litigation and are not seeking to intervene in the proceedings—therefore previous rulings made during the proceedings are immaterial to the Court’s consideration whether to permit the brief. While amicus may not address issues not raised by the parties, they are not solely confined to arguing the theories advanced by the parties. See Keating v. State of Florida, 157 So.2d 567, 569(Fla. 1st DCA 1963). These attorneys have nothing to gain by filing these affidavits, but keeping a qualified judge on the bench. These filings are justified by the unusual circumstances of this case.

Lastly, as to the JQC’s contention that this “Court does not have unlimited resources for reading briefs” and that Judge Watson’s principal brief is simply too long, the Court should consider that throughout these proceedings Judge Watson

has maintained her innocence and raised valid concerns that go to the heart of an independent and fair judiciary. While brevity is always preferred,⁵ indolence is incompatible with the success of a legal system “based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to the American concept of justice and the rule of law.” *The Code of Judicial Conduct, Preamble*.

Where, as here, Judge Watson has shown that the JQC has become embroiled in a systemic failure to protect the concepts of an independent, fair and competent judiciary, and has failed to provide justices and judges with the basic precepts of substantive and procedural due process, as well as equal protection under the law, this Court should not turn a blind eye to these important matters because it may require some additional reading.

This case presents the Court with the opportunity to (1) reevaluate its supervisory relationship over the JQC, (2) review the inconsistent manner in which

⁵The briefing schedule for the Show Cause Order is remarkably expedited in comparison to other appellate time frames. The JQC assumes that the two amici, the Voters and the Attorneys, somehow knew the other was submitting an amicus brief and therefore should have filed only one brief. There is nothing to suggest that this was the case.

the JQC adheres to its own rules, and (3) evaluate the complete lack of oversight and/or the requirement that the Commission follow any code of ethics. The important issues raised in Judge Watson's brief, include, but not limited to:

a) The threat to the independence of the judiciary by the JQC, and the JQC's unequal treatment of judges allowing the Commission to give preferential treatment to some judges by ignoring its duty to file formal charges with the Florida Supreme Court. This has allowed the JQC to enter into secret deals with favored judges wherein *formal charges were not filed* against a judge in direct contravention of Rule 6 (f), FJQCR;⁶

⁶ This improper exercise of authority by the JQC was exposed by the May 22, 2014 Recommendation of Suspension by the Commission in the matter of Inquiry Concerning a Judge, The Honorable Gisele Pollack, Nos. 13-633, 14-151, 14-187, case no. SC14-985. Because of events which ultimately required the Commission to recommend immediate suspension of Judge Pollack, the Commission was required to reveal the Investigative Panel's record with its recommendation to the Florida Supreme Court.⁶ It was only then that this Court and the public learned that the JQC entered into a February 21, 2014 Stipulation between the Commission and Judge Pollack, wherein *formal charges were not filed* against Judge Pollack in direct contravention of Rule 6 (f), FJQCR. Instead the parties agreed that: "*Formal charges will be held in abeyance for a period of three (3) years* from the date of the execution of the Substance Rehabilitation Contract..." See principal brief **Tab 26**. This process employed by the JQC violates the Florida Constitution which places the exclusive authority to discipline justices and judges with the Court. See In re Henson, 913 So.2d 579, 589 (Fla. 2005)." p. 58. See Judge Watson's

b) The abuse by the JQC in the application of its rules which allow the arbitrary and capricious post-election challenge made to Judge Watson's election. To allow this abuse of power by the JQC would result in the divestment of the precious rights and freedoms of 691,025 votes cast by the Broward County electorate;⁷

c) The actions by the JQC, by improperly filing formal charges against Judge Watson for *alleged and disputed* attorney misconduct related to an attorneys' fee dispute that occurred approximately ten (10) years prior to Judge Watson

principal brief § 4.4 pp. 57-65. One can only speculate as to the number of other cases wherein the Commission has entered into back room deals for judicial misconduct which were never disclosed to the Florida Supreme Court and the public." See principal brief § 4.4. pp. 57-65.

⁷ Voter's rights are protected by the First and Fourteenth Amendments to the U.S. Constitution. See Anderson v. Celebrezze, 460 U.S. 780, 786-87, 103 S. Ct. 1564, 75 L.Ed.2d 547 (1983); Ray v. Mortham, 742 So.2d 1276, 1285 (Fla. 1999). Eligibility to run for office is controlled by the Florida Constitution and no statute or governmental body (such as the JQC), can alter the eligibility requirements. These qualification requirements are absolute and any statute, rule, or law which restricts eligibility to run for judicial office beyond the requirements of the Florida Constitution is invalid. Fla. Const. art. V §8. See also Norman v. Ambler, 46 So.3d 178, 183 (Fla. 1st DCA 2010). This interpretation by the JQC allows the members to effectively place new qualification requirements on judicial candidates, violates the Florida Constitution, and would effectively allow some of the fifteen (15) JQC members to be the final arbiter of judicial elections and appointments, superseding the authority of the voters, the governor and/or the state constitution." See principal brief p. 90, § 4.8. pp. 88-94.

becoming a judge, is an abuse of power. The Commission's subjective motivation in bringing the proceeding against Judge Watson was in bad faith, was initiated with and is animated by a retaliatory, harassing, or other illegitimate motive to recover "**restitution**" from Judge Watson personally, for which the complainants were not lawfully entitled.

d) The failure to provide procedural and substantive due process rights provided an accused justice or judge during the JQC process,⁸ and the failure to provide adequate interlocutory review of panel rulings to ensure a fair and impartial Hearing

⁸ The JQC is not in substantial compliance with its own procedural rules and has not been in compliance with these rules for some time. In a striking admission that Judge Watson discovered by happenstance, the JQC acknowledged that it has not been following the Florida Supreme Court's approved Published 1998 JQC Rules (hereinafter "Published 1998 JQC Rules"). See principal brief, **Tab 44**. In an apparent effort to conceal the JQC's long standing non-compliance with the Published 1998 JQC Rules, on or about September 30, 2011, McGrane (then Chair of the JQC) and Schneider (JQC General Counsel), submitted proposed amendments to these rules on behalf of the JQC, (hereinafter "*Unpublished JQC Rules*"). See principal brief, **Tab 28**. Significantly, the JQC adopted in major portion the proposed amendments so that the rules "would conform the present practices of the Commission", unwittingly acknowledging that the Commission was not in substantial compliance with its previously adopted and approved JQC rules. Based upon the public filings, it appears that these *Unpublished JQC Rules* were not passed or published in accordance with Rule 2.140 of the Florida Rules of Judicial Administration as confirmed by the Clerk of the Florida Supreme Court.

Panel violates both the Florida and the United States Constitution;⁹ and

e) The harmful effects of the lack of oversight and accountability with respect to the JQC and the lack of a process for addressing allegations of JQC misconduct are alleged, results in unequal treatment of the law and abuses by the Commission.¹⁰

⁹ In the proceedings below Judge Watson moved to disqualify certain members of the Hearing Panel but these motions were denied. See principal brief, **Tab 22**. Pursuant to the current framework of the FJQCR and Florida law, Judge Watson had no procedural remedy to have the decisions reviewed prior to the Final Hearing and recommendation by the Hearing Panel. Pursuant to U.S. Supreme Court rulings, the failure to provide an opportunity to have these orders reviewed prior to the Hearing Panel's recommendation deprives Judge Watson of her constitutionally protected interest in her property without due process under the Fourteenth Amendment of the U.S. Constitution. The United States Supreme Court has made clear that a fundamental tenet of due process is a fair and impartial tribunal. See Marshall v. Jerrico, Inc., 446 U.S. 238, 242, 100 S. Ct. 1610, 64 L.Ed.2d 182 (1980). The Court in Ward v. Village of Monroe, 409 U.S. 57, 59-60, 93 S. Ct. 80, 83, 34 L.Ed.2d 267 (1972) expressly stated that an unbiased proceeding is required in order to satisfy the requirements of due process and that any unfairness in the proceeding cannot be corrected on appeal. (Emphasis supplied) Id. at 59-60.

¹⁰ "The power to discipline a judge rests solely with the Florida Supreme Court, and the Commission's actions by entering confidential settlements with a judge shifts the power to discipline a judge from this Court to the Commission-- a clear violation of art. V, §12, Fla. Const. The lack of transparency, accountability, and the Commission's convenient claims of "confidentiality" when it serves its purpose, allow for the abuses that occurred in Judge Watson's case. One can only speculate as to the number of other cases wherein the Commission has entered into

Recently, U.S. District Judge Donald M. Middlebrooks criticized the JQC for bullying and acting in a manner that is a direct threat to the judiciary. “Judge Middlebrooks Not Happy With JQC for Disciplining Fellow Judge,” Daily Business Review, 30 May 2014. See principal brief § 4.3 pp. 52-56.

As stated by Judge Middlebrooks:

This is dangerous ground. The JQC’s actions strike at the heart of what it means to be a judge in a democracy...How can the JQC allow itself to be used in this fashion? (Emphasis supplied).

Id.

The concerns raised by Judge Middlebrooks were addressed by Judge Watson throughout the proceedings and raised in her brief.

back room deals for judicial misconduct which were never disclosed to the Florida Supreme Court and the public. Recently, at least two other judges have been arrested for DUI. Another judge stepped off the bench to engage in a brawl with a Public Defender and is accused of hitting the attorney. A fourth judge walked out of a family law hearing because he was “sick of their crap” and announced he was “going to happy hour.” As of the filing of this brief, the JQC has not filed formal charges against any of them.” See principal brief § 4.4. pp. 57-65. And based upon a review of the JQC cases on the Court’s web site, this remains the case. See principal brief § 4.4. pp. 57-65.

III. JQC'S OBJECTION TO *DR. PHILIP BUSEY ET AL.* AMICI CURIAE BRIEF

On July 31, 2014, *Dr. Philip Busey et al.* filed a Motion for Rehearing of the Clerk's Order's denying and striking their Amici Curiae Brief and Appendix. Judge Watson join's in the Motion for Rehearing filed by *Dr. Philip Busey et al.*, and adopts the arguments set forth in the motion.

IV. CONCLUSION

The procedural and due process irregularities of the Clerk in denying and striking the Amicus Curiae Briefs in this case demand attention from this Court. The rules do not provide for Clerks to decide substantive motions. Moreover, when a court of appeals makes the decision to deny the request for an Amicus to file a brief, it almost always does so by an order explaining the reasons for the denial. At a minimum Judge Watson respectfully requests that the Court provide an opinion so that further appellate review may be sought.

WHEREFORE, the Judge Watson respectfully requests that this Honorable Court grant this, her Motion for Rehearing, Reverse the Clerk's July 18, 2014 orders as to the Amicus Curiae Briefs of *Werter* and *Dr. Philip Busey et al.*, and grant their Motions for Leave to File Briefs as Amicus Curiae.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Judge Watson's *Amended* Motion for Rehearing and/or Clarification as to the Clerk's Order Denying Amicus Curiae James S. Werter, Esq. and Amici Curiae Philip Busey et al.'s Motions for Leave to file Amicus Curiae Brief and the Ultimate Striking of the Proposed Briefs was furnished via the E-Filing Portal by e-mail on this 7th day of August, 2014 to: J. Dennis Card, Jr., 2501 Hollywood Boulevard, #101, Hollywood, Florida 33020 (Email:dcard@consumerlaworg.com); Marc Finkelstein, Esq., 600 S. Andrews Ave., Ste. 405, Ft. Lauderdale, Florida 33301 (Email: mfinkels@yahoo.com); The Honorable Laura M. Watson, 201 S.E. 6th Street, Ste. 1005B, Ft. Lauderdale, Florida 33301(Email:

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Pursuant to FJQCR Rule 10(b) a copy is furnished by e-mail to: The Honorable Kerry I. Evander, Chair of the JQC, 300 S. Beach Street, Daytona Beach, Florida 32114 (Email: evanderk@flcourts.org).

By: /s/ Robert A. Sweetapple
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CERTIFICATE REGARDING FONT

The undersigned certifies that this brief uses 14-point Times New Roman type in compliance with Fla. R. App. P. 9.210(a)(2).

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